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December 13, 2007

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**Re: Frank Joseph FAGONE**  
**DOB: 10/02/1983**

#### **AID IN SENTENCING EVALUATION**

To the Honorable Court:

I was requested by Attorney John Moss, Appointed Attorney pursuant to the Federal Criminal Justice Act, to conduct a neuropsychological forensic evaluation of Mr. Frank Fagone. The purpose of this evaluation was to assess his current level of cognitive and psychological functioning in order to assess how such factors might impact his behavior.

Mr. Fagone is currently awaiting sentencing at the Massachusetts Department of Correction at Cedar Junction. He has pleaded guilty on charges of possession and distribution of drugs (cocaine and heroin).

#### **Sources of Information:**

In order to assess these issues, I spent approximately 8 hours conducting a comprehensive evaluation of Mr. Fagone at the Walpole Department of Correction of the Commonwealth of Massachusetts on December 12, 2007. This evaluation included a variety of standardized tests administered by me. The evaluation included the administration of the Digit Span, Logical Memory Subtest from the Wechsler Memory Scale, Revised Version (WMS-R), the Rey Complex Figure, the Hooper Visual Organization, the Reading Comprehension and Written Description of the Cookie Theft from the Boston Diagnostic Aphasia Evaluation, The Wide Range Achievement Test 3<sup>rd</sup> Edition (WRAT-3), the Wisconsin Card Sorting Test (WCST), the Wechsler Abbreviated Scale of Intelligence, the Test of Memory Malingering (TOMM), the Booklet Category Test, Sentence Completion, and the Millon Clinical Multiaxial Inventory, Third Edition (MCMI-III). I also conducted an extensive clinical neuropsychiatric interview with Mr. Fagone.

In addition, I reviewed a variety of documents relevant to this case. These records included the following:

**School Records to include:**

- Cape Cod Alternative School, Discharge Summary (12/15/1998)
- Cape Cod Alternative School, Mid-Term Reports (09/25-12/04/1998)
- Cape Cod Alternative School, Individualized Education Plan (05/27/1998)
- Dennis-Yarmouth Regional School District, Speech and Language Evaluation by Linda Santerre, M.S. CCC/SLP (02/05/1998)
- Barnstable Middle School, Educational Testing by Annmarie Breakey (01/14/1997)
- Cape Cod Alternative School, Testing Report by Judy Gibson, M.Ed. CAGS (01/17/1996)

**Juvenile Records to include:**

- 9<sup>th</sup> Month Assessment/Court Report/Release Summary, The Northwestern Academy Intensive Secure Treatment Unit (12/29/2000)
- Psychological Evaluation by Jerry Lazaroff, Ph.D. Delaware County Juvenile Court (04/03/2000)
- Case History Narrative, The Commonwealth of Massachusetts, Department of Youth Services (08/02/1999)

**Police Records to include:**

- Delinquency Commitment, The Commonwealth of Massachusetts, Juvenile Court Department (07/22/1999)
- Delinquency Commitment, The Commonwealth of Massachusetts, Juvenile Court Department (07/07/1999)
- Incident Report, Sandwich Police Department (02/19/1999)
- Incident Report, Barnstable Police Department (02/17/1999)

**Confidentiality and Informed Consent:**

I informed Mr. Frank Fagone that I am a psychologist licensed in Massachusetts who was asked by his attorney to perform the above evaluation. I explained that what he told me would not be kept in confidence, but could be discussed with his attorney and included in my report. I informed Mr. Fagone that he did not have to answer any questions that he did not want to answer. Mr. Fagone indicated that he understood the purpose of the evaluation and limits of confidentiality as described. He participated freely in the evaluation. Mr. Fagone was interviewed in English, his native language.

**Relevant History:**

I will only briefly review Mr. Fagone's history here. This history is available in more detail in his assorted records.

Developmental, Educational and Social History: Mr. Fagone was born in Chester, Pennsylvania on 10/02/1983 to Frank Fagone and Deborah Wolbert. His parents were never married. Mr. Fagone has three younger brothers, Joseph who is about 2 years younger, Christopher who is about 7 years younger, and Nicholas who is about 8 years younger. He also has three half brothers on his mother's side whom he has never met and about whom he has no information.

According to records he was the product of a full and uncomplicated pregnancy and met developmental milestones age appropriately (Case History Narrative, The Commonwealth of Massachusetts, Department of Youth Services, 08/02/1999). However, his mother was a heroin addict and it is not known whether she was using during her pregnancies.

Mr. Fagone lived with his brothers and their mother through the age of 9. His father was never around as he worked wherever he could find work in constructions. He visited the children every other weekend.

Mr. Fagone recalled the years spent with his mother as years characterized by profound neglect and hardship. He described his mother as "a prostitute, a heroin addict. There were duds coming over all the time, night and day. They were rude, they were junkies. I was always told to go to my room and stay there". He denied ever being asked or forced to prostitute himself. He recalled the house being used by these people to use drugs. He recalled: "I would find heroin vials and needles and burnt spoons everywhere". When asked whether he could recall any good thing about his mother he stated "there were no good things, she was never around, she would be away for 2-3 days, then come home and go to sleep without saying anything. She was always high. She was like a dead person. She never played with us or talked to us. It was me and my brothers. I fed them. I got up in the morning and cleaned the spoons, burnt from heroin. I would wash them and use them to feed cereals to my brothers. We had no food. My father would fill the fridge every other weekend and my mother would sell the food to get high. She sold food stamps to get high. I would steal from the electronic store and take video games and cash them at the pawn store to buy food. When me and Joe [Joseph] would leave the house to go steal stuff, I would put my little brothers in a hallway at the bottom of the stairs. I left a mattress and toys and I would fill the stairs with all the clothing I could find so they would not climb up the stairs and roam around the house. We had no gates or anything for them. I worried they would roam around the house and hurt themselves with needles and lots of shit that was in the house". He described himself as the adult of the house and stated that his brothers regarded him as a father figure, especially his brother Joe, who "would not make a move without me. He does everything I do".

When his father came home every other weekend, he and Mr. Fagone's mother would argue endlessly. They would yell and fight. He recalled that his father hit his mother in front of the children. He would "smack" her with his hands on her body and face. Mr. Fagone believes he was upset with her for using so much and being "a junkie". He never hit the children.

Mr. Fagone had no extended family around from his father's side (his paternal grandparents were deceased prior to his birth and other paternal relatives lived in Nevada), but his maternal grandparents lived in Pennsylvania as well. They had separated prior to Mr. Fagone's birth. He recalled that his grandfather owned a furniture and gun store. He at times took Mr. Fagone to auctions and would give him money for food. He described him as "the only cool person. He knew what was going on. Sometimes we stayed with him. He was more a friend than a grandfather". He passed away from a heart attack when Mr. Fagone was 17 years old and was in jail. He could not attend the funeral. He recalled his grandmother as "not involved much. She was round and never got me and my brothers out of the situation". He recalled that years later she became more concerned and tried to find out where the children had been taken by DSS. She visited Mr. Fagone once, while he was in jail in Pennsylvania. He felt he had nothing to say to her and currently has no contact with her. She continues to live in Pennsylvania and is now in her mid 60s.

Throughout these years Mr. Fagone and his brothers hardly ever attended school. No adult was there to tell them to go to school or provide any structure to their lives. He was however enrolled in a school and eventually the teachers called DSS. When he was 9 years old, Mr. Fagone and his brother Joe were taken together to a foster home, while his younger brothers went to a different home as they were toddlers. He remembered the first foster home as "a big house with a bunch of kids. It was fun initially to be around kids my age but then got old. You want to see your parents. Daddy came to see us on the weekends with his new girlfriend Linda (the two live together to date)". By the time Mr. Fagone had turned 10 years old, his father had obtained full custody of all four children. Mr. Fagone recalled that his father went and picked them all up the same day. He stated: "It was a big day for me". The children lived with their father and Linda in Toby Farm in Pennsylvania, just outside Chester, and started going to school

regularly. Mr. Fagone played basketball and was in the school team. He obtained good grades and was doing well. When Mr. Fagone was 12 years old the family moved to Cape Cod due to his father's work.

During this time Mr. Fagone grew closer to his father. He also felt somewhat hopeful about his mother, as she would call the house saying that she was doing better and wanted to see the children. She however never did. When Mr. Fagone was about 13 years old his mother died from a heroin overdose. He recalled coming home and finding his brothers in tears. His father told him what had happened. He stated: "I knew she would have never changed. I didn't even cry. I never went to the funeral and don't know where she is buried".

He also stated that her death marked the onset of his spiral downward. He started smoking marijuana with some friends. They would steal it from their respective parents (Mr. Fagone's father was addicted to marijuana and was abusing prescribed medications for a back injury, mostly Oxycodone). He felt angry with all those people who knew and had done nothing. He stopped attending school and dropped out of the basketball team. By age 14 he dropped out of 7<sup>th</sup> grade. He started spending days and nights away from the house and would not call to tell his father where he was. He hung out with friends and smoked marijuana and cigarettes. While he experimented with drugs and alcohol, he never developed a habit.

Around that time his father became unable to continue working due to his back injury. Things in the household quickly span out of control. Linda left, feeling too overwhelmed from the care of four children and a partner with no income. Mr. Fagone's father "had a breakdown" and was hospitalized for depression for about 2 weeks.

In 1997 Mr. Fagone's father voluntarily relinquished custody of his children and moved with Linda back to Pennsylvania. Mr. Fagone's younger brothers were sent to live with the father's relatives in Nevada, while Mr. Fagone and his brother Joe were taken under DSS custody. Mr. Fagone was 14 years old at the time.

From that point on Mr. Fagone went in and out of foster care in Massachusetts. He and Joe were separated. He stated: "I used to run from every foster home I was in. I went to school but the foster parents overplayed their role trying to be your mother and father. One couple I liked and they wanted to adopt me but I could not imagine that, giving up my own father and say this is now my new father. I could not do that".

Mr. Fagone also started getting in trouble with the law and was arrested on several occasions for breaking and entering, stealing, etc. (see Criminal History section below for details).

When he was 16 years old his case manager pushed for him to be returned to living with his father. Mr. Fagone moved out of foster care and went to Pennsylvania to live with his father. His brother Joe also joined him. In March 2000 he was however charged with aggravated assault. He reported that he hit another boy with a baseball bat because the boy had "jumped" his brother Joe. He was committed to DYS in July 1999 and was placed in a staff-secure, intensive group home for boys, the Glenn Mills School for Boys, where he remained for 8 months until 02/29/2000. He then ran away, which resulted in violation of his probation and a transfer to The Northwest Academy Intensive Secure Treatment Unit. He remained there until he turned 18 years old and was released from DYS. At that point he decided to return to Massachusetts, where he felt he had friends and some connections.

In 2001-2002 he moved to Hyannis on Cape Cod. He remained unable to get a job and lived with various friends until he met Lori who became his girlfriend. The two lived at her parents' house. In 2003 Lori and Mr. Fagone had a son, Francis, who is now 4 years old. At that point he felt he had to provide for his son and was introduced to selling

drugs by some friends. He initially felt ambivalent about this as he could not take out of his mind the fact that drugs had killed his mother. He stated: "I could not think about it. I had to do it".

Mr. Fagone awaits trial on charges for drug distribution at the Massachusetts Department of Correction at Cedar Junction, where he has resided for about two years.

Mental Health History: There is no reported history of mental illness and he was never treated with psychiatric medications.

Educational History and Prior Evaluations: Mr. Fagone's educational history is detailed above. To briefly summarize, he attended school very sporadically through the age of 9 and subsequently changed schools often. He had great difficulties with learning and felt that sports were the only thing that pushed him through school. He dropped out of school in 7<sup>th</sup> grade, and, while he received some further education through DYS, this was fragmented to the point that he did not remember ever going to school after 7<sup>th</sup> grade, although records indicate that he received some education through DYS for an equivalent of a 10<sup>th</sup> grade. He never obtained a GED.

Mr. Fagone has received a number of evaluations for learning difficulties beginning in 1996, when he was in 6<sup>th</sup> grade at the age of 12 years.

He was evaluated with the Woodcock-Johnson Psycho-Educational Battery, Revised Edition at the Cape Cod Alternative School by Judy Gibson, M.Ed. CAGS, on 01/17/1996. He was in 6<sup>th</sup> grade at the time and was 12.4 years old. He was evaluated due to concerns by his teachers regarding his difficulties learning. On this measure he was found to overall perform at the 12<sup>th</sup> %ile, which is a mildly impaired range of performance (although the evaluator interpreted this as a low average performance). He was found to have relative weaknesses with auditory short-term memory, auditory processing and comprehension/knowledge of language. This pattern was noted to be often seen in individuals with language disabilities. He was further noted to have difficulties with reading, mathematics, and general knowledge. He was noted to do better with visual information and when engaged in hands-on activities. However, for unclear reasons, Mr. Fagone was not diagnosed with a learning disability (Cape Cod Alternative School, Testing Report by Judy Gibson, M.Ed. CAGS, 01/17/1996).

He was evaluated with the Woodcock-Johnson Psycho-Educational Battery, Revised Edition at the Barnstable Middle School by Annmarie Breakey on 01/14/1997. He was in 7.5 grade and was 13.3 years old at the time. On this measure he was again found to have a low overall intellectual quotient and learning difficulties (Barnstable Middle School (01/14/1997).

He received a speech and language evaluation at the Dennis-Yarmouth Regional School District on 02/05/1998 by Linda Santerre, M.S. CCC/SLP to assess the impact of his language delays on his academic achievement. He was in 8<sup>th</sup> grade at the time and was 14.4 months old. The evaluation indicated the presence of difficulties with expressive language characterized by short sentences, fragmented phrases, delayed response times and word finding difficulties. He was also noted to have difficulty completing thoughts and ideas. He had been previously evaluated for speech and language delays in December 1995 by Richard Towne, Ph.D. at the Barnstable Middle School and found to have significant delays in both receptive and expressive language (the Dennis-Yarmouth Regional School District, Speech and Language Evaluation by Linda Santerre, M.S. CCC/SLP, 02/05/1998).

He received a Psychological Evaluation by Jerry Lazaroff, Ph.D. at the Delaware County Juvenile Court in Pennsylvania on 04/03/2000. At the time of this evaluation he was 16.6 years old. He was administered the Kaufman

Brief Intelligence Test (K-BIT), and the Test of Academic Performance (TAP). On the Kaufman he obtained a Verbal I.Q. score of 79, a Performance I.Q. score of 70 for a full I.Q. score of 72. On the TAP he was found to be at a grade equivalent level of 3.7 for mathematics, 3.5 for spelling, 4.8 for reading recognition and 3.0 for reading comprehension. Overall his performance indicated borderline cognitive functioning and achievements at the elementary school level.

**Criminal History:** While living in Massachusetts, Mr. Fagone was adjudicated delinquent on 08/11/1997 on Breaking and Entering, Larceny, Receiving Stolen Property and Vandalism; on 10/15/1997 on Breaking and Entering and Larceny; on 04/30/1998 on Breaking and Entering, Larceny, Disturbing a School Assembly and Receiving Stolen Property; on 08/07/1998 on Breaking and Entering; on 10/28/1998 on Assault and Battery; on 07/06/1999 on Vandalism (Psychological Evaluation, 04/03/2000). In 1999 he moved to Pennsylvania, where he was charged on 03/22/2000 with Aggravated Assault, Simple Assault, Recklessly Endangering Another Person, Harassment and Stalking, and Disorderly Conduct. He was found delinquent and was placed at Glen Mills School for Boys. He left Glen Mills School for Boys without permission on 12/08/2000, which resulted in violation of probation and AWOL for which he was then placed at the Northwestern Academy Intensive Secure Treatment Unit (9<sup>th</sup> Month Assessment/Court Report/Release Summary, The Northwestern Academy Intensive Secure Treatment Unit, 12/29/2000).

**Medical History:** There is no reported significant medical history. He has a bullet lodged in his left thigh secondary to an accidental gunshot wound from an acquaintance. He was hospitalized for this injury in December 2000 but the bullet could not be removed for unclear reasons. He was hospitalized once in 1997 for asthma and bronchitis. There is no reported history of loss of consciousness, head trauma, seizures, thyroid problems, cancer or cardiac problems. He never had a major surgery or was exposed to toxic substances.

**Substance Abuse History:** As detailed above. In summary, he started using marijuana at the age of 13, smoking every once in a while initially. By the age of 18 he was smoking about 1 oz a day. He experimented with drugs and alcohol but did not develop a habit. When he was about 20 years old he started using Percocet, eventually using up to 7-8 pills a day. He smokes a pack of cigarettes a day.

**Mental Status and Behavioral Observations:**

He presented as a young man of stated age wearing an orange jail suit. His left hand was tattooed. He had very short black hair and beard. He was of average built. He demonstrated no physical or perceptual limitation. He engaged in good eye contact. His affect was within normal range and he retained a sense of humor. He denied feelings of depression. He stated that he is in a "jail mood" and that he was not "that happy", but denied changes in sleep or appetite, loss of interest in activities or changes in his sex drive. He stated that his energy is decreased and that he feels down when he thinks about his current situation. He feels hopeless about the future and has a foreshortened view of the future, not being able to imagine life past the immediate present. When pressed to provide an answer about what he would like to do if he got out of jail he stated that he would like to work in constructions. He denied any changes in his ability to control his emotions. He denied being tearful but reported that at times he feels "mad for no reason". He had not gotten into fights in jail but has gotten into arguments with other inmates. He denied other problems except that he is easily distractible and his mind may drift away such that he may not remember a conversation or other day to day information. He continues to have difficulty reading and spelling. He stated that it is hard for him to comprehend what he reads and he avoids reading unless he has to. He stated that he is "good with numbers". He denied problems with speech articulation or finding words. He spoke fluently and prosodically. He had some difficulties understanding questions and occasionally needed both repetitions and simplifications of instructions. His approach to task was deliberate and did not evidence disinhibition or guardedness. His approach



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In terms of self-perception, he perceived himself as the caretaker of his brothers throughout childhood and early adulthood. He felt that his stealing at a young age was motivated by the need to provide food for himself and his brothers and his selling drugs later on in life was motivated by a need to provide for his child. He felt that he was never good enough in school and appeared aware of his cognitive limitations. He had a hard time sustaining engagement with some tests as he felt he was being tested to see whether he was "crazy" or "stupid". He was somewhat reassured by explanation of the reasons of the tests. He appeared to try his best but was discouraged by failure and became progressively more frustrated with the evaluation as this progressed. While he wanted to give up, he was able to continue working with encouragement. He had great difficulties with spelling, and was reluctant to engage in any writing.

### **Synthesis of Test Results:**

I believe that Mr. Fagone cooperated fully with all procedures and performed as well as he could on the various tests. This is confirmed by his performance on measures of memory malingering and self-disclosure (TOMM, MCMI-III Validity Scales) where his performance fell in the average range indicating good effort, good motivation, and a cooperative approach.

In terms of cognitive functioning, his performance evidenced overall intellectual skills in the borderline range (FIQ=84) with stronger skills in the performance than the visual modality (PIQ=88; VIQ=83). He further demonstrated significant difficulties with attention, concentration, and visuo-motor processing (Rey, Hooper). He was noted to have a fair capacity for immediate learning of new information but to quickly become overwhelmed and then progressively more disorganized with worse performance over time rather than benefit from increased exposure to information. On a brief measure of educational achievement (WRAT-3) his performance fell at the 6<sup>th</sup> grade level for reading and math and at the 3<sup>rd</sup> grade level for spelling.

Overall his presentation on cognitive measures is consistent with previous findings and indicates the presence of a significant learning deficit. There was no evidence of memory difficulties.

From a psychological point of view, his presentation was consistent with that of individuals who suffer from a post-traumatic stress disorder. The predominant feature of his personality structure is his apprehension about safety in life and mistrust of others. He experiences some degree of paranoid ideation with a fear that dangerous strangers may intrude in his life with deleterious consequences, that good things will not last, and that significant people whose support he had hoped to gain, will betray or forsake him. There is evidence in his formal testing that he was exposed to an event or events in which he suffered a severe threat to his life, a traumatic experience that precipitated further intense fears. Currently, the residuals of this event appear to be persistently re-experienced with recurrent and distressing recollections, such as by cues that resemble or symbolize an aspect of the traumatic event. When possible he seeks to avoid such cues. Where they cannot be anticipated and actively avoided, as in dreams and nightmares, he may become terrified, exhibiting a number of symptoms of intense anxiety. Signs of intense distress include difficulty falling asleep, outbursts of anger, hypervigilance, night terrors, and a subjective sense of numbing and detachment.

His presentation also indicated a markedly diminished sense of self worth. He experiences himself as worthless and inefficient. He continues to believe that some people can be a source of comfort for each other in life and he has a positive view of family ties. However, while he desires closeness and affection, he is concerned that he will be



rejected and abandoned. He anticipates being left or ridiculed and to protect himself he avoids true intimacy by remaining mostly isolated. Left to his own device and without structure to rely on, he can withdraw protectively into a peripheral social role and then sabotage constructive opportunities. Due to his cognitive limitations, his marked difficulties communicating ideas and feelings in a relevant manner further alienate him from others and contribute to create a sense of himself as unable to progress in life and ultimately contribute to his lack of vision for his future.

Overall, his presentation on measures of psychological and emotional functioning (MCMI-III, Sentence Completion) was consistent with the following diagnoses:

Axis I	309.81 Post-Traumatic Stress Disorder
	300.02 Generalized Anxiety Disorder
Axis II	Paranoid and Depressive Personality Traits

#### **Summary of Assessment and Recommendations:**

Mr. Fagone is a 24-year-old man with a history of severe neglect and traumatic losses. He lacked any parental guidance and was left to his own device at a very early age. In addition, he had to tend to his brothers, who needed, like Mr. Fagone himself, food and shelter. Furthermore, he was constantly exposed to the extreme physical and mental state of his mother, who was at best absent and at worst passed out from drugging, robbing her children of their food for money for drugs, or prostituting herself for the same reason. Mr. Fagone's house was populated by "junkies" who came and went leaving behind a trail of needles, heroin vials and burnt spoons. By the time the children were removed from the house, Mr. Fagone was only 9 years old, his brother Joe was 7, Chris 3 and Nick 2.

Throughout his early life Mr. Fagone was confronted with a constant state of lack of safety and protection, as well as exposure to potentially harmful situations. In spite of his significant cognitive limitations and lack of any guidance or structure, he learned at a very young age how to fend for himself and his brothers. This he achieved with the only resources he had at his disposal, stealing for money for food. He was motivated by the constant fear of going hungry at best and of being seriously hurt or seeing his family members get seriously hurt at worst. As a young child he learned to detect the most minute nuances of other people's moods and behaviors in an effort to anticipate and prevent danger. Deprived of any structure and guidance in his life he learned how to respond to the immediacy of his and his family's needs without much understanding of the longer-term consequences of his actions and choices.

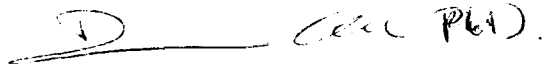
Lacking sufficient intellectual capacities to push him through school or a job he resorted to what was most immediately available to him to secure the most basic needs of food and shelter in his life. He stole as a young adult for food and sold drugs in his early 20s motivated by the same sense of urgency to provide for his loved ones.

He remains unable to cope with the death of his mother and the irrevocable loss of his childhood and numbing his feelings is likely the only strategy he knows. To avoid experiencing extreme distress, he tends to numb his emotions through the use of substances. He indicated that he likes marijuana likely because it slows him down and makes him feel calm.

Mr. Fagone's history indicates that when he is in a stable and nurturing environment he is able to function significantly more efficiently. He did well while living with his father prior to his father injuring his back and becoming unable to work and provide for his children. He remains very close to his brothers and his son. Caring and providing for his loved ones remains a powerful source of motivation for Mr. Fagone. If such energy were to be channeled towards positive goals by means of structure and support, he would be likely to be able to achieve and sustain a gainful role in life and society. He has significant cognitive limitations. Trade education may prove a

reasonable option for him. He expressed a desire to work in the field of construction and career counseling may prove useful in helping him engage in this professional path.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dorian Chialant", followed by a horizontal line.

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